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**Food & Beverage
Services
Concessionaire License

McDowell Mountain
Ranch Park
City of Scottsdale**



REQUEST FOR PROPOSALS FOOD & BEVERAGE SERVICES

**McDowell Mountain Ranch Park/Aquatic Center, 15525 North Thompson Peak Parkway
Scottsdale, Arizona**

July 26, 2006

The City of Scottsdale, Arizona invites sealed proposals for a limited time concession license agreement ("License") to operate a creative, staffed food and beverage service in an indoor/outdoor, café-style setting at the McDowell Mountain Ranch Aquatic Center ("MMR"), scheduled to open mid September 2006.

The City plans a soft opening in September 2006 and a Grand Opening on October 21. This state-of-the-art facility is rated "community-level", and is designed to serve an area that is currently populated by more than 60,000 people. Census information shows that approximately 29% of those people are under the age of 18, and 68% under the age of 45. The area population is expected to grow to 105,000 by 2015. MMR's amenities include:

- Family Aquatic Center (17 lap lanes, deep water dive area, 600-foot "Lazy River", zero depth beach entry, Tube Slide, turf area with shade, and shower/locker room to support both the pool and the fitness center). The City plans to keep the pool open year round and heated in the winter (excluding the zero depth area, lazy river and slide in the winter). A competitive area is designed for adult lap swim as well as high school swim and dive teams.
- Fitness Center of approximately 4,000 square feet, including treadmills and stationary bicycles; free weights and weight machines, and a locker room that is shared with pool patrons. The Fitness Center will be open to the public year-round between the hours of 6:00 a.m. and 8:00 p.m.
- Skate Park of approximately 18,000 square feet that will be designed as a "street course" with a "bowl". In-line skates and skateboards may be used, but bicycles are prohibited. The Skate Park will open in approximately November 2006, and will be open from 6:00 a.m. until the park closes at 10:30.
- Open Recreation Area includes a turf area with ramada, playground and restrooms, and is designed for picnics, social gatherings and passive play.

PRE-PROPOSAL CONFERENCE (MANDATORY)

There will be a mandatory pre-proposal conference at 8:00 AM (local time) on Thursday, August 3, at MMR in the License Area, 15525 North Thompson Peak Parkway, Scottsdale, AZ 85260. **Failure to attend this mandatory meeting will automatically disqualify a proposer.**

LICENSE TERM

The License term is for approximately eight (8) months beginning on or about September 9, 2006 and ending approximately April 30, 2007. The start date will be dependent on the final timing of this RFP. The City seeks a flexible and willing vendor that will provide these services for an interim period while the City assembles a longer term Request for Proposals.

LICENSE AREA

MMR has a dedicated, 368 square foot food and beverage preparation room, plus shaded, indoor and outdoor "café" areas (collectively, the "License Area") where customers can sit and eat. The License Area is equipped with a standalone, 3-compartment sink and integrated drainboards, separate handwashing sink and backflow preventer. Eating areas include café-style tables and chairs. In addition to a roll-up, locking service window opening to the enclosed swimming areas, there is also a separate service window with cafe seating inside the building so that Fitness Center and Skate Park patrons can participate. A floor plan is included as Exhibit "A".

Proposers are required to visit the site, and have this visit acknowledged in writing by an authorized staff person. This written acknowledgement will be placed on the "Affidavit of Visitation" enclosed with this RFP as Exhibit "B", and submitted with the Proposal. In order to schedule a visit, please call Sunny Peters, 480-312-7966, in advance, to ensure that someone is available to open the License Area. In the event the pre-

proposal meeting is held at MMR, proposers can have the affidavit signed at that meeting. **Note: It is the proposer's sole responsibility to research and confirm with the Maricopa County Environmental Services Division ("MCESD") what menu items may be offered for sale based on the equipment provided in the License Area.**

SERVICES

The City wishes to introduce the concept of year-round, staffed food and beverage service ("Services") at MMR, including sales to park patrons both during and outside the aquatic center's hours of operation. The City desires to offer menu selections that maximize the License Area (i.e., to the greatest extent allowed by the MCESD). The proposer will incorporate tried and true "favorites" that may be typically found at a swimming pool concession, with options such as healthier choices, coffee and fruit drinks, seasonal variety, promotional opportunities, etc. The proposer is encouraged to consider a variety of marketing tools such as signage, coupons, buy one/get one, advance orders, holiday and supplier promotions, or other inducements to MMR patrons. The means and methods of providing Services will be established by the proposal process, with favor given to proposer's variety and creativity in addressing the City's vision of the desired Services.'

HOURS OF OPERATION

The exact days of the week and hours of operation for the Services at the License Area will be determined by the proposal process. The City will favor responses that propose a 12-month, 7-day per week schedule for Services ("Hours of Operation") in accordance with the published business hours of MMR, but consideration for a lesser schedule will be considered as provided for in the "Proposal Content" portion of this RFP. A copy of those business hours is included with this RFP as Exhibit "C". Exhibit C also projects attendance and approximate peak hours for MMR, based upon the attendance at Eldorado and Cactus Aquatic Centers in Scottsdale.

LICENSE FEES

The Licensee will pay to the City a percentage of the Licensee's gross monthly receipts ("Use Fees") from sales at the License Area. The percentage will be determined by the proposal process, with a minimum acceptable percentage of 18%. However, if the proposed percentage calculates as less than \$50 in any month, the use Fee in that month shall be \$50.

FORM OF LICENSE

The City will require the selected proposer to participate in discussions to implement the proposal and to submit such cost, technical, or other revisions to their proposals as may be necessary to produce a final license agreement. The office of the City Attorney shall draft all final license documents that may result from this Request for Proposals ("RFP"). A copy of the draft license is attached as Exhibit "D" to this RFP. The final License will be based on this form and prepared by the City Attorney's office modified as necessary to incorporate the terms of the successful proposal. Proposers should be prepared to execute the License in its current form before presentation to the City Council, subject only to modifications essential to reflect the business terms proposed. Proposers should use the form license to anticipate information that will be necessary to finalize the license and should provide such information with their proposals. Proposers should explain the business terms of their proposal but not attempt to suggest specific wording for the license. The City recognizes that certain provisions of the form license may not apply to some proposals. After a proposal is selected, the form license will be edited by the City Attorney's Office to implement the proposal selected. Irrelevant terms will be removed and new terms added as necessary to implement specific business points with license language changes being limited to these purposes. The principal portions of the form license the City anticipates will need to be modified to implement the selected proposal are the provisions defining the Licensee's obligations regarding:

1. Percentage rent amount.
2. Hours of operation.
3. Specific improvements proposed at the License Area.

ADDITIONAL TERMS

Proposers are required to submit proposed menus and prices, which will be evaluated on a comparative basis. Menus and pricing will become part of the final License Agreement that is signed by the City. No alcoholic beverages, tobacco products, or items in glass containers may be sold. The hours of operation of

the License Area are subject to the City's approval. The License requires the Licensee to submit a periodic report in addition to the monthly fee. With the City's prior approval, the Licensee may be allowed to provide services outside the License Area. The Licensee will have precedence over all other third party vendors to provide Services at the facilities. If the organizers of a special event wish to provide their own F&B services, the Licensee shall have the first right of refusal to provide Services for such an event. If the special event takes place outside of regular MMR operating hours, the Licensee will still have the first right of refusal, but won't be obligated to provide Services.

ADDITIONAL INFORMATION

This Request for Proposals does not commit the City to enter into an agreement, to pay any costs incurred in the preparation of a proposal to this request or in subsequent negotiations, or to contract for the Services.

Licensee must accept the License Areas in "as is" condition. Licensee is responsible to provide all equipment required to provide the Services that is not provided by the City on the commencement date of the License. Accordingly, unless otherwise agreed, Licensee is responsible to provide the labor (at Licensee's cost) for installation of any improvements, whether provided by Licensee, City or by a third party. All such improvements shall require the prior approval of the City and otherwise comply with the provisions of the License.

Information provided by the City in connection with this RFP is believed correct, but all proposers should perform their own investigation of the project and independently confirm for themselves any information provided by the City.

Requests for additional information relating to the terms and conditions of the RFP should be directed in writing to Ms. Robin Rodgers, Asset Management Specialist, 7447 East Indian School Road, Suite 205, Scottsdale, AZ 85251, telephone 480-312-2522, fax 480-312-7971, email rrogers@scottsdaleaz.gov. Questions relating to the facilities or proposed operations should be directed in writing to Ms. Leslie Clark, Parks and Recreation Manager, at 480-312-2425, fax 480-312-8432, email lclark@scottsdaleaz.gov. RFP packets can be obtained by calling or emailing Ms. Rodgers, or may be downloaded from the City of Scottsdale's web site <http://www.scottsdaleaz.gov/Vendors>.

The City is not liable for any costs associated with the development, preparation, transmittal, or presentation of any proposal or any additional materials submitted. The City may use as its own, without payment of any kind or liability therefore, any ideas, suggestions, layout, or plan received during the proposal process.

The successful proposer will be required to execute a License agreement ("License") substantially in the form attached as Exhibit "D", and perform all obligations thereunder whether or not otherwise consistent with the Request for Proposals. **The License becomes binding upon the City upon execution by the City and delivery to the Licensee.** The City may elect to insert as a License requirement any performance or other benefit offered by the successful proposer. In the event of a conflict between the terms of the License and the terms of this RFP or any proposal or related document, the following precedence shall prevail:

- (1) Terms and conditions set forth in the License;
- (2) Amendments to the License;
- (3) Provisions set forth in referenced documents;
- (4) Requirements and provisions set forth in this RFP;
- (5) The proposal submitted by the proposer in response to this RFP.

TAXES

Licenses with the City are not exempt from the State of Arizona, Maricopa County or City of Scottsdale transaction privilege taxes. In addition to payments required under the License, transaction privilege ("sales"), and all other taxes at the rate provided by law, shall be paid by Licensee in addition to any taxes imposed on Licensee's business activities conducted at this location. Questions pertaining to the applicability of taxes should be directed to the following: City of Scottsdale Tax & License Division at (480) 312-2400; Maricopa County at (602)255-2060 or (602)542-2076, ask for TPT Auditing; and for State of Arizona at (602)716-6651.

RULES

All proposers must be of good moral character and must not have been convicted of a felony or a crime involving moral turpitude in the last ten (10) years. All proposers must agree to submit to any background checks as deemed necessary by the City.

Proposers shall fully comply with all laws, ordinances, rules and regulations of the United States, State of Arizona, County of Maricopa and the City of Scottsdale, including specific City regulations related to building permits and fees, zoning, use permit stipulations and regulations regarding alcoholic beverages, nuisance abatement, immoral conduct, smoking/non-smoking, privilege, and use excise taxes.

ORAL INSTRUCTION - INTERPRETATION

The City of Scottsdale will not be responsible for proposers adjusting their proposals based on oral instructions by any member of the City, City staff, or by the City's contracted consultant or agent. Proposals deviating from the specifications contained herein by any means other than written addendum issued by the Asset Management Specialist will be subject to rejection.

ADDENDA

Any addendum issued as a result of any change in this RFP shall be issued in writing, shall become part of the RFP and must be acknowledged in the proposal submittal. Failure to indicate receipt of addenda may result in a proposal being rejected as non-responsive.

Internet Users: All addenda for this RFP will be posted on the Internet at the City of Scottsdale's web site, <http://www.scottsdaleaz.gov/Vendors>. It is the proposers' responsibility to verify receipt of all addenda prior to submitting a proposal.

Failure of any proposer to give notice, in the form of written questions, during the pre-proposal period, of any item or issue contained in this RFP that should not be included or amended, or that the City failed to contain in this RFP that should have been included, and by such notice, the City could have cured the problem if such item or issue had been raised or objected to, such failure to give notice shall constitute a waiver by the proposer(s) of its right to object to the inclusion or lack of inclusion of the item or issue in the RFP in any subsequent protest filed by any unsuccessful proposer(s).

PROPOSAL SUBMITTAL

A completed proposal document (including all of the information requested in this Request for Proposals) must be submitted to constitute an acceptable proposal.

One original plus four complete sets of the proposal must be submitted in a sealed envelope addressed to the Asset Management Specialist and marked with the words "PROPOSAL FOR FOOD AND BEVERAGE SERVICES AT MCDOWELL MOUNTAIN RANCH PARK/AQUATIC CENTER" plainly marked on the envelope. The name and address of the proposer must also appear in the upper left corner of the envelope. The City is not responsible for the premature opening of a proposal that is not properly addressed and identified. Proposals will not be accepted via fax or email.

PROPOSAL GUARANTEE

Each proposal must be accompanied by a cashier's check made payable to the order of City of Scottsdale in the sum of \$1,000. Proposal guarantees shall be returned to all except the successful proposer within fifteen (15) days after the City signs the License. The successful proposer's guarantee will be retained by the City as a security deposit. Notwithstanding the previous sentence, if the successful proposer fails to agree to the terms and conditions of the attached License and any subsequent addenda, its proposal guarantee will be forfeited.

PROPOSALS OPENING

The City of Scottsdale reserves the right to request additional or supplemental information or clarifications from proposers, to conduct such investigations as the City considers appropriate with respect to the qualifications and capabilities of any proposer or information contained in any proposal, to reject any or all proposals, to modify or supplement or amend the Request for Proposals or the proposal process/schedule,

to waive any informality, to negotiate with proposers, to cancel or re-issue the Request for Proposals, or advertise for new proposals. Proposals received after the opening date and time will not be accepted and will be returned unopened.

Sealed proposals shall be mailed or hand delivered to Robin Rodgers, Asset Management Specialist, 7447 East Indian School Road, Suite 205, Scottsdale, Arizona 85251. **PROPOSALS ARE DUE AND WILL BE OPENED AND ACKNOWLEDGED AS A MATTER OF PUBLIC INFORMATION AT 10:30 A.M. LOCAL TIME, FRIDAY, AUGUST 25, 2006 IN THE TRANSPORTATION CONFERENCE ROOM, 7447 EAST INDIAN SCHOOL ROAD, SUITE 205, SCOTTSDALE, ARIZONA.**

Proposers note: All mail to the City of Scottsdale, including Federal Express or similar overnight deliveries, are first sent to a central location for x-ray which will delay the delivery process to Ms. Rodgers. Proposers must plan for adequate delivery time if proposals are not hand delivered.

SECURITY DEPOSIT

The successful proposer's proposal guarantee shall be transferred into a Security Deposit, to be held by the City during the License term.

PROPOSAL REQUIREMENTS

All proposers must submit evidence that they are fully competent, and that they have the necessary qualifications, experience, capabilities, and financial resources to fulfill the terms and conditions of the License. To provide the City of Scottsdale with information on this point, proposers must complete and submit all of the information stipulated in the Proposal Content section later in this Request for Proposals, together with such information as may bear on proposal evaluation.

Failure to submit a completed Proposal including all required attachments or documentation will be grounds for disqualification of the proposer.

PROPOSALS AS PUBLIC RECORDS

Forms and information submitted in response to this RFP shall become the property of the City and may be subject to disclosure under applicable public records laws. Each proposer shall agree that the proposal submitted shall not be considered confidential and that no information contained therein shall be treated by the City as either confidential, proprietary, or trade secret information.

Proposers may elect to provide detailed financial information in a separate binder marked "CONFIDENTIAL" included with the proposal package. While the City cannot guarantee confidentiality of the financial information, the City will endeavor in good faith to protect the confidentiality of such binders and to return said binders to the proposer when the License is executed. Any such binder submitted by the proposer whose proposal is selected will not be returned and will become a public record. Neither party shall be liable for disclosures required by law.

ORGANIZATION EMPLOYMENT DISCLAIMER

Any contract entered into as the result of this Request for Proposals will not constitute, create, give rise to or otherwise recognize any partnership, joint venture or other business organization of any kind between the City and the proposer. The rights and obligations of the parties shall only be those expressly set forth in the License. The proposer will be required to agree as part of any contract entered into as the result hereof that no person supplied by it in the performance of the contract is an employee of the City, and further agrees that no rights of the City's Retirement or Human Resources benefits rules accrue to any such persons. Any contracting party shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, other benefits and taxes and premiums appurtenant thereto concerning such persons provided by such contractor in the performance of the contract, and shall save and hold the City harmless with respect thereto.

PROPOSAL EVALUATION PROCESS

Proposals and presentations will be evaluated on a comparative basis, will be assigned either "0", "1" or "2" points, and multiplied by the weights identified in the Proposal Content section of the Request for Proposals.

EVALUATION AND SELECTION PROCESS

The proposals will be considered and evaluated in the following manner:

1. City staff will review the proposals, qualification information, and other requested materials, and select a proposal to recommend to the City Council.
2. Proposers may be requested to submit additional and revised information and materials.
3. Proposers may be invited to participate in oral interviews and presentations.
4. The City Attorney's office will prepare a License implementing the staff preferred proposal.
5. The selected proposer shall execute the License.
6. City shall execute the License.

GROUND FOR DENIAL OR DISQUALIFICATION

The City may deny or disqualify any proposal for any one or more of the following reasons:

1. The proposer, for any reason, does not fully meet the qualifications, standards, and requirements established by the City. The burden of proof shall be on the proposer and the standard of proof shall be by clear and convincing evidence.
2. The proposer's proposed activities and/or improvements will create a safety hazard at or on the Airport.
3. The acceptance of the proposal will require the City to expend funds and/or supply labor and/or materials in connection with the proposed activities and/or improvements that the City is unwilling and/or unable to spend and/or will result in a financial loss or hardship to the City.
4. The proposer has either intentionally or unintentionally misrepresented or omitted a material fact in the proposal or in supporting documentation.
5. The proposer has failed to make full disclosure in the proposal or in supporting documentation.
6. The bidder (or an officer, director, agent, representative, shareholder, or employee of bidder) has a record of violating rules or regulations related to the bidder's proposed activity.
7. The proposer (or an officer, director, agent, representative, shareholder, or employee of proposer) has defaulted in the performance of any license, sublease, or other agreement at the Airport or at any other airport.
8. The proposer does not exhibit adequate financial responsibility or capability to undertake the proposed activity.
9. The proposer cannot provide a performance bond or applicable insurance in the type and amounts required by the City for the proposed activity.
10. The proposer (or an officer or director of proposer) has been convicted of a felony or a crime of moral turpitude.
11. **The proposer seeks terms and conditions which are inconsistent with City policies and values, the Request for Proposals, or the best interest of the City.**

SCHEDULE

The proposed schedule for the selection process is as follows:

July 26, 2006	Request for Proposals available for distribution
August 3, 2006	Mandatory pre-proposal conference and site inspection 8:00 AM
August 15, 2006	Deadline for questions (must be submitted in writing)
August 25, 2006	Proposal deadline: 10:30 A.M. Local Time
August 31, 2006	Announce selection

September 9, 2006

Finalize the License

PROPOSER INSTRUCTIONS

The proposer must fully respond to the specifications in all sections. The proposal must meet or exceed the minimum requirements stated. Any exceptions and proposed alternatives must be carefully detailed so as to allow full evaluation of them.

Proposals must be organized in the same sequence as the RFP, although explicit cross-references may be made to additional or appendix material. Proposals should be specific and complete in every detail, prepared in a readable and straight-forward manner. Proposers must answer all questions completely and accurately, and furnish all required information/documents – failure to do so may result in disqualification.

When possible, proposers are encouraged to submit multiple proposal sections that reflect different strategies in answering the same question.

Proposals must be typewritten or word processed using at least 10-point font on standard 8 ½” by 11” paper. Proposals must be bound on the left long side. The original proposal must be three-ring bound.

PROPOSAL CONTENT

Each proposer must complete the following information and attach all required information and/or documentation as follows:

- A. **Cover Letter** identifying the proposing entity(ies) and the name of the proposed business, if different. An authorized representative of the proposing entity must sign the cover letter.
- B. **Table of Contents.**
- C. **Hours of Operation** (Weight: 10). Evaluate MMR’s hours of operation as provided in Exhibit D, and create a schedule for Services that meets or exceeds the City’s goal to provide full-time, year-round Services. The City will consider, but not be limited to, contiguous or non-contiguous schedules based upon peak times, progressive schedules over the course of the License term or the same schedule over the course of the License term or any combination thereof. The City will favor responses demonstrating that proposer showed flexibility and creativity in meeting the stated criteria, providing explanations, and presenting alternatives to consider.

	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>
Maximum:	6a to 8p	6a to 8p	6a to 8p	6a to 8p	6a to 8p	6a to 8p	6a to 8p
Minimum:	6a to 9a 11a to 2p 6p to 8p		6a to 9a 11a to 2p 6p to 8p		6a to 9a 11a to 2p 6p to 8p	6a to 9a 11a to 2p 6p to 8p	6a to 9a 11a to 2p 6p to 8p
Proposed:	_____	_____	_____	_____	_____	_____	_____

- D. **Menus and Pricing** (Weight: 9). Provide a detailed menu for MMR, based on the qualifications of the License Area and taking into consideration the other activities at MMR. Incorporate “tried and true” items that are known good sellers. Include marketing suggestions for introducing new menu concepts such as healthy choices, and suggestions for rotating menu items monthly, seasonally, by holidays, or other. Provide prices (and sizes, when applicable) for each menu item. The City will favor proposals that maximize the menu possibilities of the facility, based upon requirements imposed by Maricopa County Environmental Services Division. Furthermore, the City will favor proposals that offer explanations of

alternative menu items that will enable proposal evaluators to assess the level of item quality and to compare to other proposers.

- E. **Marketing** (Weight: 9). Provide strategies that proposer can implement to elevate the proposer's presence at each of the Centers. These would include, but not be limited to economic advertising opportunities such as in City bulletins, sales inducements, special events, showcasing new products, opening and selling from both service windows and other suggestions for attracting business from park patrons, etc. Provide a sample or photocopy of signage your business typically uses.
- F. **Evidence of Insurance** (Weight: 10). Provide a letter of assurance from proposer's insurance supplier(s) that the required coverage can be provided.
- G. **Qualifications and Experience** (Weight: 9): State the number of years you have engaged in the development, operation, management, and marketing of a similar food and beverage business. Include a description of your experience for at least the past five (5) years. The City will favor proposals that communicate a demonstrated ability to managing changing environments and that provide specific examples of creative problem solving.
- H. **Financial Information** including the following:
 - 1. Current credit report from two reputable credit agencies. (Weight: 8)
 - 2. A statement of financial responsibility from a qualified financial institution or from such other source as may be readily verified through normal channels. (Weight: 7)
 - 3. A three (3) year historical financial (profit and loss) statement. (Weight: 6)
- J. **Proposed Staffing Levels** (Weight: 7). Provide proposed staffing levels for each Center based on the schedules submitted above. Include chain of command, contact information, and the procedure that will be used in the event a Licensee management person needs to be contacted.
- K. **Proposed Use Fees** (Weight: 6). Each month the Licensee will pay to the City a percentage of the Licensee's gross monthly receipts received from providing the Services, except that a minimum payment of \$50 is due for each facility each month.

MMR

Minimum: 18%

Proposed: _____

- L. **Training** (Weight: 6). Provide a written description of job duties for all positions that will contribute to providing the Services, including written procedures for opening for business, closing for business, and safeguarding money. Include a written dress code and attach a color picture of the uniform that proposer's employees will be required to wear. (These will be attached to the License Agreement of the successful proposer.)
- M. **Policies and Procedures** (Weight: 4). Provide written policies and procedures that will be utilized by the proposer, including an employee "Safety Standards and Emergency Action Plan" that outlines safety and emergency procedures, incident/accident prevention and reporting, environmental considerations, security (for both money and the License Area), communications, and customer service standards. (This will be attached to the License Agreement of the successful proposer.)
- N. **Health Department Documentation** (Weight: 4). Provide a copy of your current Food Manager's Designation from the Maricopa County Environmental Services Division ("MCESD"). Provide a history of your standing and evaluations with the MCESD for the past three (3) years in all food and beverage locations you operate, whether or not a concession setting.

- O. **References** (Weight: 3). Provide the names and contact information of three (3) individuals who can verify your experience, qualifications, and capabilities to develop, operate, manage, and market a similar food and beverage business. Contact information should include complete mailing address, telephone, fax and email address.

The weighting (or value associated with) each of the preceding areas has been provided to give proposers an idea of the relative importance of each element to the City.

P. **Proposer Information.** (Weight: 1)

1. Provide the proposer's complete company legal name, address, city/state/zip code, as it would appear in the License Agreement.
2. Provide the following tax information:
 - a) Proposer's Federal Identification Number.
 - b) Arizona Sales Tax number.
 - c) Arizona Use Tax number for out-of-state proposers.
 - d) City of Scottsdale Sales Tax number.
3. Choose the applicable legal structure and provide the following information:

Partnership

- a) City, county and state in which the partnership legally exists.
- b) Type of partnership (e.g., general, limited, joint venture, other).
- c) Date partnership was formed.
- d) Whether partnership was recorded, when, where.
- e) Evidence demonstrating the undersigned is authorized to sign this RFP.

Corporation

- a) State in which the corporation legally exists.
- b) Date corporation was formed.
- c) Whether corporation is public or private. If publicly held, where the stock is traded.
- d) Evidence demonstrating the undersigned is authorized to sign this RFP.

Limited Liability Company ("LLC")

- a) State in which the LLC legally exists.
- b) Date LLC was formed.
- c) Evidence demonstrating the undersigned is authorized to sign this RFP.

4. Provide the name, title and contact information of proposer's official representative, as it would appear in the License Agreement. This is the person to whom official notices regarding the License Agreement would be sent. Contact information includes address(es), telephone number, toll-free telephone number, fax number, email address (**required**).
5. Provide the name and contact information of the principal contact person who would oversee day-to-day performance of the License Agreement. This may or may not be the same as proposer's official representative. Contact information includes address(es), telephone number, toll-free telephone number, fax number, email address (**required**).
6. Provide complete payment address, including company name, address, and city/state/zip code.
7. Provide the emergency, 24-hour service contact name, telephone number and pager number that relate to this RFP.
8. Copy the pages from this RFP entitled **Legal Statements** and **Proposal Affidavit**. Provide the required information and signatures, and submit with your proposal.

Q. Legal Statements

Answer the following questions as they may apply to proposer. "Proposer" as used here, means a sole proprietor, all partners of a partnership, limited partnership, or limited liability company, or director, officer, or shareholder of a corporation).

- a. Has the proposer ever been convicted of a felony?
☐ NO ☐ YES (If yes, please give date, place, and nature of conviction on a separate sheet referring to this paragraph Qa.)
- b. Has the proposer ever been convicted of a crime of moral turpitude? (Examples of crimes of moral turpitude include, but are not limited to, embezzlement, forgery, theft, robbery, fraud, perjury, rape, assault, murder/attempted murder, willful tax evasion, kidnapping, indecent exposure, prostitution, any other crime of a sexual nature and any and all crimes involving minor children, etc.)
☐ NO ☐ YES (If yes, please give date, place, and nature of conviction on a separate sheet referring to this paragraph Qb.)
- c. Does the proposer have any judgment (rendered in a court of law) outstanding against them?
☐ NO ☐ YES (If yes, please give the date, place, and nature of judgment on a separate sheet referring to this paragraph Qc.)
- d. Has the proposer declared bankruptcy within the last 10 years?
☐ NO ☐ YES (If yes, please give the date, place, and nature of proceeding on a separate sheet referring to this paragraph Qd.)
- e. Has any license, use, or operating agreement for any business enterprises held by proposer ever been canceled or placed in default?
☐ NO ☐ YES (If yes, please give the date, place, and nature of the cancellation or default on a separate sheet referring to this paragraph Qe.)
- f. Has the proposer (or any entity the proposer has had an ownership interest in) ever had a bond or surety canceled or forfeited?
☐ NO ☐ YES (If yes, please give name of the bonding company, name and address of principal on bond and reason for such cancellation or forfeiture on a separate sheet referring to this paragraph Qf)
- g. Is there any employee or officer of the City or their families who has any direct or indirect financial interest in the proposing entity?
☐ NO ☐ YES (If yes, please give name(s) of such individual(s), and describe the relationship on a separate sheet referring to this paragraph Qg)
- h. If proposer is owned or licensed by another person, partnership, corporation, or limited liability corporation (or if proposer does business under another name), provide the name of that entity:

PROPOSER COMPANY NAME: _____

PROPOSAL AFFIDAVIT

STATE OF ARIZONA

CITY OF SCOTTSDALE

For himself or herself personally, and for the entity submitting this bid, the person who signs this affidavit certifies to the City of Scottsdale all of the following:

1. This affidavit and the proposal incorporated by reference, as if fully set forth in this proposal, the full content of the Request for Proposals.
2. The proposal remains in effect and may not be revoked by the proposer for a period of ninety (90) days after the proposal submittal due date, and may remain valid beyond that time with the consent of the bidder.
3. The entity submitting the bid and I have read and understand all of the provisions set for the Request for Proposals.
4. The proposal meets or exceeds the specifications contained in the Request for Proposals.
5. We have received the listed addenda to the Request for Proposals and understand that they are part of the Request for Proposals.

Addendum # _____ Dated: _____

Addendum # _____ Dated: _____

Addendum # _____ Dated: _____

Addendum # _____ Dated: _____

6. All information requested by the City has been submitted and is true, accurate, and complete.
7. I am duly authorized to execute a License Agreement in the form specified by the Request for Proposals.
8. None of the contents of the proposal have been communicated by me or the entity submitting the proposal, or to the best of our knowledge, by anyone else. No such communication shall occur prior to the official opening of the proposal.
9. If our proposal is selected, we will immediately enter into the agreement and commence to fully perform thereunder.
10. The proposal is genuine and not a sham or collusive.
11. The proposal was not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not herein so identified.
12. Neither the proposer nor any of proposer's officers, partners, owners, shareholders, agents, representatives, employees, or parties in interest, has in any way colluded, conspired or agreed, directly or indirectly, with any person, firm, corporation or other proposer or potential proposer in regard to the amount, terms, or conditions of this Proposal and has not paid or agreed to pay, directly or indirectly, any person, partnership, company, association, organization, corporation or other proposer or potential proposer any money or other valuable consideration for assistance in procuring or attempting to procure the Agreement or fix the prices in the attached proposal or the proposal of any other proposer, and hereby states that no such money or other reward will be hereinafter paid.

13. Beginning on the date the Request for Proposals was issued, we have neither recommended nor suggested to the City, or any of its officers, agents, representatives or employees, any of the terms or provisions set forth in the proposal or the Agreement, except at a meeting open to all interested proposers, of which proper notice was given.

14. Unless we inform you in writing prior to the bid opening, this affidavit shall be effective and deemed repeated as of the date the proposal is submitted, as of the date proposals are opened, and as of the date the agreement is executed.

Printed name of Proposed Business

By: _____
Authorized Agent Signature

Authorized Agent Printed Name

Authorized Agent Title

STATE OF ARIZONA)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
 by _____, _____ of _____ a _____.

Notary Public

My Commission Expires:

Exhibit A
MMR Floor Plan
(provided via addendum)

EXHIBIT B
AFFIDAVIT OF VISITATION

By my signature below, I certify that I, or an authorized agent of my company, visited the sites included within this Request for Proposals, on the dates shown below:

McDowell Mountain Ranch Aquatic Center
10187 East McDowell Mountain Ranch Road
Scottsdale, Arizona

Date of site visit: _____

Printed name of person making the site visit.

Printed name of authorized Center staff member.

Signature of authorized Center staff member.

EXHIBIT C**MMR PROPOSED HOURS OF OPERATION****September through April**

(Hours are subject to change based on the needs of the facility.)

MMR		Mon-Fri	Sat & Sun	Projected Weekday Peak**	Projected Weekend Peak**
	Park	Sunrise-10:30p	Sunrise-10:30p	10a-4p, 6-9p	9a-6p
	Fitness Center	6a-8p	10a-6p	6-10a, 4-8p	1-4p
	Aquatic Center	6a-2p, 6-8p	1-5p (Oct-Mar) 1-6p (Apr-Sept)	9a-2p	1-5p
	Skate Park	Sunrise-10:30p	Sunrise-10:30p	N/A	N/A

**MMR AQUATIC AND FITNESS CENTERS
PROJECTED MONTHLY ATTENDANCE**

January	8,400
February	7,390
March	8,710
April	9,300
May	12,000
June	24,000
July	22,000
August	11,000
September	9,400
October	8,330
November	7,000
December	6,000

**Note: All projected peak hours are based upon 2005 attendance at the and Eldorado Cactus Aquatic Centers.

LICENSE AGREEMENT

This Revocable License Agreement ("Agreement" or "License") is made and entered into this ____ day of _____ 2006, by and between the City of Scottsdale, a municipal corporation, ("the City") and _____, an Arizona _____ ("the Licensee").

RECITALS

A. The City of Scottsdale is the owner of certain real property in Scottsdale, Arizona, known as McDowell Mountain Ranch Park (15525 North Thomopson Peak Parkway). This property is a public park ("Park") that includes an aquatic center, skate park and fitness center. The Park is open for use by the general public.

B. The Licensee desires to conduct certain sales of food and beverages in areas designated as the license areas, located within the Park (collectively "License Area").

C. The City desires to grant to the Licensee a license in order to use the License Area for the sales of food and beverage items ("F&B Items") to persons participating in Park activities.

NOW, THEREFORE, for and in consideration of the foregoing, the covenants and agreements contained herein to be kept and performed by the Licensee, including payments to be made as described in this Agreement, and for other good and valuable consideration, the City and the Licensee agree as follows:

TERMS

1.0. License Area.

1.1. Description. The License Area is located within the Park as shown on the map included as Exhibit "A" to this Agreement.

1.2. Re-configuration. The City shall have the sole discretion to modify the configuration of the License Area from time to time during the term of this Agreement. The City will consult with the Licensee prior to any such modification or re-configuration. Any relocation of then existing improvements required by the City's reconfiguration shall be at the City's expense. The City may also, at its sole discretion, regulate, reroute and otherwise alter pedestrian and vehicular traffic access to the License Area without the Licensee's consent.

1.3. Condition of License Area. The Licensee has examined, studied and inspected the License Area and acknowledges and understands that they are being made available for use in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. The Licensee has inspected the License Area and areas adjacent to them, and obtained such information and professional advice as the Licensee has determined to be necessary related to this Agreement or this transaction.

1.4. Fixtures and personalty included. The License Area also include the fixtures owned by the City listed on Exhibit "B" ("Fixtures"), attached to this Agreement. The City may elect to remove or supplement these Fixtures from time to time, in its sole discretion, but is not obligated to provide any other Fixtures to the License Area. The City's Fixtures in the License Area shall be

owned at all times by the City. Any and all of said Fixtures the City, from time to time, made available to the Licensee shall be the responsibility of the Licensee to maintain and keep in good working condition at its sole cost and expense.. The fixtures shall remain the property of the City throughout the term of this License and at the termination or cancellation of this Agreement, the Licensee shall return the property to the City's possession in the same condition it was received, reasonable wear and tear excepted. The Licensee's personal property shall be replaced, at the Licensee's expense when damaged or worn out. The Licensee shall not remove or alter in any way any Fixtures located within the License Area, without the City's prior written consent.

1.5. The Licensee's equipment.

1.5.1. The Licensee shall provide, at it's sole cost and expense, all equipment, supplies and appliances necessary for concession operations, including, but not limited to refrigerators, ice machines, microwaves, shelving, racks, etc. All such personal property must comply with Maricopa County Environmental Services Department requirements and any other applicable laws, rules and regulations for the operation of such concession activities.

1.5.1.1. The Licensee understands that any fixtures required by the Licensee, permitted by this Agreement and necessary to comply with the requirements of any governmental agency (e.g., Maricopa County Environmental Services Department) will be purchased by the Licensee and installed or attached by the City.

1.6. Title. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, the Licensee's rights are limited to the License Area and the Licensee's rights in the License Area are limited to the license rights created by this Agreement, which creates only a revocable license in the License Area. The City and the Licensee do not by this instrument intend to create a lease. The Licensee shall have no real property interest in the License Area. The Licensee's sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for damages. The Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the License Area. The Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the License Area or the Licensee's use thereof.

2.0. Term of Agreement.

2.1. License. The City hereby gives to the Licensee a license in the License Area, subject to the following provisions and conditioned upon the Licensee's full, timely, complete and faithful performance of any and all things to be performed or done under this Agreement by the Licensee and the Licensee hereby accepts the license and this Agreement.

2.2. Term. The term of this Agreement shall be for a period of approximately eight (8) months, beginning on or about September 9, 2006 (Commencement Date).

2.3. Extension. In the event of the Licensee's continuous, full, complete and timely performance of this Agreement throughout the Term, this Agreement may be extended at the City's option on a month-to-month basis. The terms and conditions of any Extension shall be those in effect at the time a notice of extension is given by the City, unless otherwise agreed upon by the Parties in writing.

2.4. Holding over. In any circumstance whereby the Licensee continues to occupy the License Area after the expiration of this Agreement or any of its Extensions, such holding over shall not be deemed to operate as a renewal or extension of this Agreement and this Agreement shall become terminable by the City at will without notice. During such hold over period, the Licensee shall continue to pay the monthly Use Fees, but at a rate that is double the amount of the Use Fees set forth in Section 3.1 hereof, unless such hold over is approved by the City.

2.5. Cancellation.

2.5.1. In the event of the Licensee's default under the terms of this Agreement, the City will give the Licensee thirty (30) days written notice of such event(s) of default. The Licensee will have thirty (30) days after receipt of such notice to remedy the event(s) of default to the City's satisfaction. If The Licensee does not correct the default to the City's satisfaction within thirty (30) days of receipt of such notice, the City may cancel the Licensee's services.

2.5.2. The City shall have the right to cancel the Agreement with 10 days prior written notice to the Licensee if there is any threat to public health.

2.5.3. Notwithstanding anything contained in this Agreement to the contrary, the City or the Licensee shall have the unconditional right, with or without cause, to terminate this Agreement at any time after this Agreement has been in existence for ninety (90) days, upon giving thirty (30) days prior written notice to the other Party.

3.0. License Payments.

3.1. Use fees.

3.1.1 The Licensee shall pay to the City _____ percent of its monthly gross receipts ("Gross Receipts") as follows, exclusive of applicable sales taxes collected, while conducting the food and beverage (hereinafter "F & B") activities, which are the subject of this Agreement.

3.1.1.1 "Gross Receipts" means all payments, in cash or in-kind, received by the Licensee as payment for F&B Items for any product sold from the License Area, but exclusive of any amounts paid by customers as tips or gratuities to the person actually serving the F&B Items. All payments by the Licensee to the City required by this Agreement for any reason shall be collectively referred to in this Agreement as "Use Fees".

3.1.1.2 Notwithstanding the provisions of subparagraph 3.1.1, if the percentage of Gross Receipts shall be less than \$50 during any month , then the Use Fee for that month shall be a flat rate of \$50.00. The monthly Use Fee is the greater amount of \$50.00 or the percentage of Gross Receipts shown above.

3.1.1.3 Use Fees shall be due and payable to the City not later than the 25th day of each month ("Payments") and shall include all Use Fees due to the City as a result of the Licensee's activities during the month immediately preceding the payment due date. Payments must be remitted by check to the City of Scottsdale, 7447 East Indian School Road, Scottsdale, Arizona 85251 ATTN: Accounting Department. License Area

3.1.1.4 The Licensee shall submit to the City, with its payments, such reports relating to the License Area's operations and revenues as the City may require. At the request of the City, reports will be on forms prepared by the City.

3.2. Reports required.

3.2.1. The Licensee Report. In addition to the report submitted with the monthly Use Fee, the Licensee shall provide the Contract Administrator with a report ("the Licensee Report"), detailing the gross monthly receipts of the License Area. The Contract Administrator may designate the manner in which the Licensee Report will be prepared and may provide a form to be used for the report.

3.2.1.1. The Licensee Reports shall be due on November 15, 2006, February 15, 2007 and May 15, 2007.

3.2.1.2. In the event of a month-to-month Extension, the Licensee Report shall be due fifteen (15) days after the Agreement terminates.

3.2.2. Inspections reports. Within five (5) days after occurrence, the Licensee shall submit to the Contract Administrator a copy of all reports received as a result of any inspection by the Maricopa County Environmental Services Department or any other entity having inspection authority over the License Area.

3.3. Security deposit. At the time of the approval of this Agreement by the City Council, the Licensee shall provide to the City a security deposit in the amount of One Thousand Dollars (\$1,000.00), guaranteeing the full and faithful performance of this Agreement. The security deposit shall be maintained by and remain in the possession of the City at all times during the term of this Agreement. Upon the termination or cancellation of this Agreement, the Licensee shall be entitled to the net amount remaining after any setoff or any other obligation owed to the City by the Licensee.

3.4. Utilities. The City shall provide electricity and water to the License Area at the City's expense. No other utilities shall be provided to or used by the Licensee in the License Area. Any telephone services desired by the Licensee in the License Area shall be at the sole cost and expense of the Licensee, who shall pay all installation and service charges.

3.5. Late fees. Should any installment of the Use Fees not be paid on or before the date due, a ten percent (10%) late fee shall be added to the amount due. Furthermore, any Use Fee that is not timely paid shall accrue interest at the rate of one and one half percent (1.5%) per month from the date the amount first becomes due until paid. The Licensee expressly agrees that the foregoing represent reasonable estimates of Licensors' costs in the event of a delay in payment of the Use Fee.

3.6. Use Fee amounts cumulative. All amounts payable by the Licensee under this Agreement or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payments required under this Agreement, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

3.7. No setoffs. All Use Fees shall be paid in full directly to the City without setoff or deduction of any description. The Licensee expressly waives any right of setoff.

4.0. Use Restrictions. The Licensee's use and occupation of the License Area shall in all respects conform to each and every one of the following cumulative provisions:

4.1. Permitted uses. The Licensee shall use the License Area solely for the marketing and sale of F&B Items, as described in this Agreement ("Services"). Except as otherwise agreed to by the Contract Administrator in writing, the Licensee shall confine service delivery to the License Area. The storage, preparation and sale of all food and beverages shall comply with any and all applicable health regulations. No alcoholic beverages, tobacco products or items in glass containers may be sold. No other use of the License Area, except as provided in this subsection 4.1, is permitted.

4.2. Permits required. The Licensee is responsible to obtain and maintain any licenses, permits or any other governmental approvals of any description from the City or any other governmental body with respect to this Agreement. Furthermore, the Licensee will ensure that its officers, employees and agents who are working in the License Area also have all the permits as required from the City or any other governmental body.

4.3. The Licensee is not the City. The Licensee, its officers, employees and agents (collectively "the Licensee") shall clearly identify that it is the Licensee, rather than the City of Scottsdale, which is offering for sale the F&B Items in the License Area. The Licensee shall neither represent that it is a part of the City of Scottsdale government, nor that it is acting on behalf of the City. The Licensee may not use the name of the City of Scottsdale, its seal, signs or logos in any advertising, promotional materials, employee uniforms or for any other purpose without the express, prior written approval of the Contract Administrator.

4.4. Items offered for sale. Items to be offered for sale ("F&B Items"), including the sizes and prices at which they are offered for sale by the Licensee, shall be subject to the prior written approval of the Contract Administrator. Price changes may be requested by the Licensee at least thirty (30) days before they are to take effect. Requests for price changes shall be in writing and shall become effective only upon the written approval of the Contract Administrator. Approved F&B Items (including sizes and prices) as of the date first written above are attached to this Agreement as Exhibit "C".

4.5. The Licensee's marketing and advertising. To be established by the proposal process.

4.6. Animals. No animals are allowed in the License Area other than seeing-eye dogs and assistance dogs providing assistance to persons in need of such assistance.

4.7. Hours of operation.

4.7.1. The License Area shall be open for Services according to the schedule attached as Exhibit "D" ("Hours of Operation"). The Licensee will not close Services at the License Area earlier than the times provided in Exhibit D without the prior written permission of the Contract Administrator.

4.7.2. The Contract Administrator shall notify the Licensee at least fourteen (14) days in advance of all special events and regularly scheduled activities which require the License Area to be open for Services beyond the hours of operation described in Exhibit "D." The Licensee shall have precedence over all other third party vendors to provide Services in the License Area. If organizers of a special event wish to have F&B Services or if a special event occurs outside the Hours of Operation, the Licensee shall have the first right of refusal to provide Services for such events, and may accept or decline in its sole discretion. If the Licensee accepts such Services, the income received from the Services will be included in the calculation of Gross Receipts.

4.7.3. The Parties recognize that the Hours of Operation may need to be increased or decreased from time to time in order to reflect seasonal fluctuations in numbers of visitors to the Centers. Not more frequently than quarterly, the Parties agree to re-evaluate the schedule set forth in Exhibit D, provided that any reduction in the Hours of Operation shall be at the sole discretion of the Contract Administrator, which permission shall not be unreasonably withheld. If the Hours of Operation are changed for any reason, a new Exhibit D will be attached to the Agreement and signed and dated by both Parties.

4.8. Safeguarding monies. The Licensee shall be solely responsible for the safekeeping of all monies in the License Area and shall remove all monies from the License Area at the close of each business day. The City shall not be responsible for the loss of any funds for which the Licensee is responsible.

4.9. Noise. No sound equipment of any kind shall be operated by the Licensee at the License Area.

4.10. The Licensee's agent. The Licensee shall at all times during any and all use of the License Area retain in the License Area a qualified, competent and experienced manager ("Food & Beverage Manager") to act as the Licensee's agent to supervise the License Area. The Food & Beverage Manager shall be authorized to represent and act for the Licensee in the Licensee's absence, in matters pertaining to all emergencies and the day-to-day operation of the License Area. The Licensee shall also identify in writing (with address and twenty four (24) hour telephone number) a person who will respond for the Licensee regarding emergencies outside business hours.

4.11. Access to the License Area. An electronic keypad is located next to each point of entry for the License Area. Individual codes will be assigned by the City to the Licensee's designees. Such codes shall be kept private and not shared under any circumstances. In addition, for emergencies and maintenance purposes, the Contract Administrator and designated staff members of the City's Facility Maintenance and Recreation Division will be assigned private, unshared codes. Any changes, additions or deletions of the Licensee's designees allowed access to the License Area by individual codes shall be reported to the Contract Administrator, in writing, not less than ten (10) days prior to the time that a change, addition or deletion is made.

4.11.1. The Licensee shall secure all the Licensee's Equipment and the License Area at the end of Hours of Operation each day, and more frequently if the Hours of Operation are intermittent.

4.11.2. If the City needs to enter the License Area for required maintenance, it shall give reasonable notice of not less than twenty-four (24) hours. In the event of an emergency, the City may enter the License Area without notice, if necessary.. The City shall be the sole determiner of whether maintenance is required or an emergency exists within the meaning of this subsection. When the City must enter the License Area for emergency purposes, the City will notify the Food and Beverage Manager of such entry no more than twenty-four (24) hours after entry, if done outside the hours of operation.

4.12. Standards of service. In entering into this Agreement, the City and the Licensee have foremost in mind providing the public with food and beverage services of the highest quality. The Licensee shall operate the License Area in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the License Area attractively maintained, orderly, clean and sanitary at all times, all to the satisfaction of the City.

4.13. Conduct at the License Area. The Licensee shall not employ, or continue to employ any person to perform services that are the subject of this Agreement, who is unclean, discourteous, inefficient or unkempt in appearance, or who uses profane, obnoxious or rude language, or acts in a loud or boisterous, or otherwise improper or inappropriate manner. The Licensee shall also take appropriate measures to insure that its employees are of a suitable character to provide services. Furthermore, the Licensee shall not employ or continue to employ any person performing services under this Agreement who, in the sole discretion of the Contract Administrator, is deemed unacceptable for employment in that capacity by the City.

4.14. Training and safety requirements. The Licensee shall ensure that all its personnel are trained in all facets of the food and beverage operations, possess the required skills and whose performance is of consistently high quality. The Licensee shall comply with, train and cause its personnel to comply with the list of job duties and the "Safety Standards and Emergency Action Plan" attached hereto as Exhibit "E".

4.14.1. The Licensee shall require its employees to wear a uniform identifying such employees as staff members of the Licensee, and not the City.

4.15. Common areas. There shall be absolutely no activity or storage, however temporary, in the halls, steps, porches or other areas within or surrounding the License Area. The Licensee shall immediately clean up any spills or debris caused by the Licensee, its suppliers or customers. The doors and gates of the License Area will remain closed at all times, except during actual use.

4.16. Parking. The Licensee's employees will park only in areas designated by the City from time to time. Vehicles making deliveries or providing service to the License Area shall park only in areas specifically designated by the City as delivery areas. Such rights are strictly limited to ingress, egress and parking. The Licensee shall immediately clean up any spills or debris caused by the Licensee, its suppliers or customers.

4.16.1. Deliveries. Licensee acknowledges that there is no exclusive loading dock for delivery to the License Area and, as such, agrees that deliveries will be made using the public pathways of the park. Deliveries can only be accepted during the Hours of Operation. Park staff is not authorized to accept Licensee's deliveries.

4.17. Inspection. The City shall have access to the License Area at all times, without notice to the Licensee, to inspect or show the License Area, or exercise the City's other rights under this Agreement. The Licensee shall promptly undertake appropriate action to correct any deficiency identified by the City, during such inspections or otherwise, in the Licensee's compliance with this Agreement.

4.18. Signs. If allowed by applicable law, Licensee shall have the right to install and operate moveable signs to identify Licensee's operations provided that all of the following conditions are met and subject to the prior written approval of the City:

4.18.1. The location, size and style of the sign shall be subject to the provisions of the applicable sign ordinance and shall be in keeping with overall aesthetics and utility of the Park's facilities and grounds, as determined by the City, and shall be designed and made in a professional manner. Handmade signs may be allowed, if tastefully and professionally made, but only at the sole discretion of the Contract Administrator.

4.18.2. The sign shall only be in place during Hours of Operation.

4.18.3. The Licensee shall bear all costs pertaining to the erection, installation operations, maintenance and removal of all signs including, but not limited to, the application for and obtaining of any required sign permits.

4.18.4. Flyers and other promotional materials used by the Licensee shall comply with the provisions of subsection 4.2, above. In addition, all written and broadcast promotional materials shall receive the prior, written approval of the Contract Administrator. The same principals stated in 4.18.2, above, shall apply to handmade materials.

4.19. Hazardous materials. The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or materials or toxic substance upon or about the License Area or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). The Licensee shall not use the License Area in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval from the Arizona Department of Health Services or any other governmental agency. The Licensee shall pay, indemnify, defend and hold the City harmless against any loss or liability incurred by reason of any Toxic Substance on, or affecting the License Area, occurring after the date of this Agreement. The Licensee shall immediately notify the City of any Toxic Substance at any time discovered or existing upon the License Area. The Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. The Licensee shall cause any on-site or off-site storage, treatment, transportation, disposal or other handling of Toxic Substance by the Licensee, in connection with the License Area, to be performed by persons, equipment, facilities and other resources, who are at all times properly and lawfully trained, authorized, licensed and otherwise permitted to perform such services.

4.20. Prohibited names. The Licensee shall not use in connection with its operations in the License Area any name that directly or indirectly refers to or contains any part of the City's name or otherwise suggests a connection between the City and the Licensee or the Licensee's activities. The Licensee shall also not use in connection with its operations in the License Area any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

4.21. Name of business. The Licensee shall operate the operations at and from the License Area under the Licensee's name given at the beginning of this Agreement, or if such name is not available, or if the City and the Licensee desire otherwise, such other name as the City may approve in the City's reasonable discretion. Following termination of this Agreement for any reason, the City shall have the exclusive right to use or allow others to use any name used to identify the Licensee's business at the License Area and at other locations within and without the vicinity, so long as the City does not use the Licensee's name as stated at the beginning of this Agreement.

5.0. Improvements and Maintenance. Except as expressly hereinafter provided, the Licensee shall have all responsibilities for improvements to and maintenance of the License Area, during the term of this Agreement.

5.1. Improvements by the City. The City has not promised to the Licensee and is not obligated in any manner to make any improvements to the License Area.

5.2. The Licensee's improvements. The Licensee shall make no structural or permanent alterations, modifications or additions to the License Area, including any relating to utility facilities, without having first received the written consent of the City which the City may withhold in the City's sole and absolute discretion. Any approved alterations, modifications or additions shall be accomplished by the Licensee at its sole cost and expense.

5.3. Maintenance by the Licensee. The Licensee shall at all times year round, at its sole expense, be responsible for maintaining the License Area in a first-class, sound, clean and attractive manner as determined in the City's reasonable discretion, so as to meet sanitary and similar standards for public food and beverage sales. The Licensee's responsibility for maintenance shall include all janitorial and cleaning services, fixtures, equipment and furnishings, interior walls and floors, except exterior walls, roof, roll up doors and exterior doors. The Licensee shall, not less than twice daily, pick up all trash and debris within 100 feet of License Area, whether or not the trash and debris were created by the Licensee or came from products sold by the Licensee, so that the area is neat, clean and tidy at all times. All such trash and debris shall be disposed of in trash containers designated by the City. The Licensee shall be responsible for proper storage and maintenance of its stock. The Licensee shall be responsible for providing, as necessary, pest control services for inside the License Area. Cleaning and servicing of all plumbing and drains within the License Area together with cleaning of drains and sewers to the point of connection with the main public sewer system shall be the responsibility of the Licensee.

5.4. Trash receptacles.

5.4.1. The Licensee shall provide and use, without limitation, suitable covered receptacles for all trash and other refuse related to the Licensee's use of the License Area. Piling of boxes, cartons, barrels or other items inside or outside the License Area is forbidden. The areas in which trash containers are stored shall be kept clean and free of all trash and debris.

5.4.2. The City shall provide trash receptacles, placed in the areas immediately surrounding the License Area, for use by the public.

5.4.3. The Licensee shall empty all of its trash containers, trash and debris, which is the subject of this subsection, into trash containers provided by and designated by the City and shall do so at the end of each business day, or more frequently as needed. The Licensee shall provide liners for all of its receptacles discussed in this subsection and shall keep them clean.

5.5. The City repairs and maintenance. All other repairs and maintenance of the License Area not specifically required of the Licensee under this Agreement shall be performed by the City at the City's convenience and expense.

6.0. Breach by the Licensee. The Licensee shall comply with, perform and do each performance and thing required of the Licensee by this Agreement and the Licensee's failure to do so shall be a breach by the Licensee of this Agreement.

6.1. Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by the Licensee of the Licensee's material obligations under this Agreement:

6.1.1. The Licensee is in arrears in the payment of Use Fees and does not cure such arrearage within ten (10) days after the City has notified the Licensee in writing of such arrearage.

6.1.2. If the Licensee shall abandon the License Area.

6.1.3. If any environmental, health or similar inspector issues any notice of investigation or violation of health, environmental or similar regulations, in connection with the Licensee's use of the License Area, or determines during any two or more consecutive inspections that the same deficiency has been repeated, or that the overall operation falls materially below standards for first-rate, well-operated similar facilities in Maricopa County.

6.1.4. If any assignment of any of the Licensee's property shall be made for the benefit of creditors.

6.1.5. If any representation or warranty made by the Licensee in connection with this Agreement, or the negotiations leading to this Agreement, shall prove to have been false in any material respect when made.

6.1.6. If the Licensee shall fail to observe and comply with all bidding requirements of the City with respect to this Agreement and with all performances promised by the Licensee with respect to the Licensee's bid submitted in connection therewith. Any representations, warranties, promises or performances made by the Licensee in connection with said bid are in addition to the other requirements of this Agreement and are incorporated as requirements of this Agreement.

6.1.7. If the issuer of any guaranty, letter of credit, bond or similar instrument shall fail for any reason to timely and fully honor any request by the City for funds, or other performance under the instrument.

6.1.8. If The Licensee shall fail to timely pay any taxes or other amounts herein required to be paid by the Licensee to the City or to any other person.

6.1.9. If The Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals from the City, or any other governmental body, or timely pay any taxes with respect to this Agreement, the License Area or the Licensee's use of the License Area.

6.1.10. If the Licensee shall fail to or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure, or neglect to do or perform or observe any of such other provisions, shall continue for a period of thirty (30) days after the City has notified the Licensee in writing of the Licensee's default hereunder.

6.1.11. If the Licensee shall persist in a pattern of repeated failure (or neglect) to do or perform or observe any provision contained herein.

6.2. The City's remedies. Upon the occurrence of any Event of Default or at any time thereafter, the City may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order at the City's option:

6.2.1. The City's right to terminate this Agreement for nonpayment of Use Fee or for any other Event of Default is hereby specifically provided for and agreed to.

6.2.2. Without demand or notice, enter into and upon the License Area or any part thereof and repossess the same, and expel the Licensee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

6.2.3. Enforce a lien (which is hereby granted to the City) upon all of the Licensee's personal property now or at any time hereafter at the License Area, securing all of the Licensee's obligations hereunder.

6.2.4. Pay or perform, for the Licensee's account and at the Licensee's expense, any or all payments or performances required under this Agreement to be paid or performed by the Licensee. Upon Payment by the City of the Licensee's obligation, the City shall bill the Licensee and the Licensee shall have thirty (30) days from the date of such notice within which to reimburse the City for its expenditures. Failure to timely reimburse the City for such expenditure may be considered an Event of Default and the City may elect to terminate this License.

6.2.5. Abate at the Licensee's expense any violation of this Agreement.

6.2.6. Pursue at the Licensee's expense any and all other remedies, legal or equitable, to which the City may be entitled.

6.2.7. Refuse without any liability to the Licensee therefore to perform any obligation imposed on the City by this Agreement.

6.2.8. Be excused from further performance under this Agreement.

6.2.9. Insist upon the Licensee's full and faithful performance under this License during the entire remaining term of this License.

6.2.10. Assert or exercise any other right or remedy permitted by law.

6.3. Non-waiver. The Licensee acknowledges the Licensee's unconditional obligation to comply with this Agreement. No failure by the City to demand any performance required of the Licensee under this Agreement, and no acceptance by the City of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way the City's ability to insist, prospectively and retroactively, upon full compliance of this Agreement. No acceptance by the City of Use Fees or other performances under this Agreement shall be deemed a compromise or settlement of any claim the City may have for additional or further payments or performances. Any waiver by the City of any breach of condition or covenant herein contained to be kept and performed by the Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a default for any succeeding breach either of the same condition, covenant or otherwise. No statement, bill or notice by the City concerning payments or other performances due under this Agreement shall excuse the Licensee from compliance with this Agreement nor estop the City (or otherwise impair the City's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against the City unless made in writing by a duly authorized representative of the City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. THE LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THE PRECEDING SENTENCE.

6.4. Reimbursement of the City's expenses to remedy. The Licensee shall pay to the City upon demand any and all amounts expended or incurred by the City in performing the Licensee's obligations.

7.0. Rights at Termination.

7.1. Delivery of possession. The Licensee shall, at the expiration of the term of this Agreement, or any extension of it, or upon any sooner termination or cancellation of the Agreement, as provided by its terms, without demand, peaceably and quietly quit and deliver up the License Area to the City thoroughly cleaned and in good repair, and in as good order and condition, reasonable use and wear excepted, as the same now are or may hereafter be placed in better condition by the Licensee or the City.

7.2. Fixtures and improvements. Upon termination of this Agreement, if the same has not occurred earlier, title to any and all fixtures and structural or permanent improvements placed upon the License Area by the Licensee shall automatically vest in the City without requirement of any deed, conveyance, or bill of sale. If the City requests any document in confirmation thereof, however, the Licensee shall execute, acknowledge and deliver the same. Nevertheless, the City shall have the right to require the Licensee to remove any such items and restore the License Area to their prior condition.

8.0. Indemnity. To the fullest extent permitted by law, the Licensee, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or willful actions, acts, errors, mistakes or omissions caused in whole or in part by the Licensee performing work or services under this Agreement, including but not limited to, any Sublicensee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of the Licensee's and Sublicensee's employees. The above defense, indemnity and hold harmless obligations shall not apply to the sole negligence of the City.

8.1. Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

9.0. Insurance. The Licensee agrees to comply with all City ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of the Licensee, prior to entering, occupying or using the License Area in any way, the Licensee shall purchase and maintain, at the Licensee's own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B++6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to the City. Failure to maintain insurance as specified may result in termination of this Agreement at the City's option.

9.1. No representation of coverage adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Licensee. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this License but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the License or failure to identify any insurance deficiency shall not relieve the Licensee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this License.

9.2. Coverage term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

9.3. Claims made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three (3)-year period.

9.4. Policy deductibles and/or self-insured retentions. The policies set forth in these requirements may provide coverage, which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Licensee shall be solely responsible for any such deductible or self-insured retention amount. The City, at its option, may require the Licensee to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

9.5. Use of subcontractors. If any work under this Agreement is subcontracted in any way, the Licensee shall execute a written agreement with the Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting the City and the Licensee. The Licensee shall be responsible for executing the agreement with the Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

9.6. Evidence of insurance.

9.6.1. Prior to commencing any work or services under this Agreement, the Licensee shall furnish the City with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by the Licensee's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this agreement, it shall be the Licensee's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

9.6.2. Certificates shall contain the specified provisions that follow and shall be submitted in the form shown as attached hereto as Exhibit "F" and shall include the following:

9.6.2.1. The City, its agents, representatives, officers, elected and appointed officials, and employees shall be additional insureds under any Commercial General Liability, Auto Liability and excess liability insurance procured by the Licensee.

9.6.2.2. The Licensee's insurance shall be primary insurance as respect the performance of this Agreement.

9.6.2.3. All policies, including Workers' Compensation, if applicable, shall waive rights of recovery (subrogation) against the City, its agent, representatives, officers, elected

and appointed officials, and employees for any claims arising out of work or services performed by the Licensee under this Agreement.

9.6.2.4. Certificates of insurance shall contain thirty (30) day advance notice of cancellation provisions. If an ACORD Certificate of Insurance form is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD forms shall have similar restrictive language deleted.

9.7. Required Coverage.

9.7.1. Commercial General Liability. The Licensee shall maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from License Area, operations, independent contractors, products-completed operations, personal injury and advertising injury.

9.7.2. Vehicle Liability. The Licensee shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on the Licensee’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Licensee’s work or services under this Agreement.

9.7.3. Worker’s Compensation Insurance. The Licensee shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Licensee’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

9.7.4. Employee Dishonesty/Fidelity Insurance. Licensee shall procure and maintain Employee Dishonesty/Fidelity Coverage, including but not limited to the perils of Employee Dishonesty, robbery, theft, and disappearance or destruction of money and securities in performance of their duties under this License. The coverage limit shall be not less than \$25,000 per loss.

9.8. The City’s Election to Provide Insurance. With respect to any insurance required hereunder, the City may elect to acquire all or any part of such insurance covering the License Area and the Licensee shall pay to the City the costs of such insurance as reasonably determined by the City. The Licensee shall provide all insurance not so provided by the City.

9.9. Risk of Loss. The City is not required to carry any insurance covering or affecting the License Area or the City’s property. The Licensee assumes the risk of any and all loss, damage or claims to the License Area or related to the Licensee’s use of the License Area or the City’s property throughout the term hereof. The Licensee’s obligations to indemnify do not diminish in any way the Licensee’s obligations to insure; and the Licensee’s obligations to insure do not diminish in any way the Licensee’s obligations to indemnify. The Licensee’s obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of the Licensee under or connected with this Agreement. The Licensee shall be responsible for any and all damages to its property and equipment used in the scope of this License and shall hold harmless and indemnify the City regardless of the cause of such damages.

10.0. Condemnation. If any part of the License Area shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose then the term of this Agreement shall cease

and terminate as of the date of title vesting in such proceeding and the Licensee shall have no claim for the value of any unexpired term of this Agreement. In the event of any taking or condemnation, the Licensee shall not be entitled to any part of the award, as damages or otherwise. The City is entitled to receive the full amount of the award or other payment, including relocation expenses, and the Licensee hereby assigns to the City any right thereto.

11.0. Damage to or destruction of License Area. If the License Area are materially damaged by fire, explosion, the elements, public enemies, or other casualty, the City or the Licensee may elect in its sole discretion to terminate this Agreement.

12.0. The Licensee's records. The Licensee will maintain in a secure place at an office within Maricopa County, Arizona, proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating to all of the business conducted upon the License Area. The records identified in this section shall be maintained for each License Area. The City shall have the right upon reasonable notice to inspect and copy such records.

12.1. Standards for financial records. The Licensee will maintain a standard, modern system of accounting and shall keep and maintain all books and records in accordance with generally accepted accounting principals applied on a consistent basis.

12.2. Right of inspection. So long as the same shall be pertinent to this Agreement or any transactions contemplated herein and, in any event, during the term(s) of this Agreement and for a period extending at least seven (7) years after termination of this Agreement, the Licensee will at its expense (i) permit and assist the City and its representatives at all reasonable times to inspect, audit and copy, as applicable, the License Area, the Licensee's facilities, activities, computer data, books of account, logs and records, (ii) cause its employees, agents and accountants to give their full cooperation and assistance in connection with any such visits of inspection or financial conferences, (iii) make available such further information concerning its business and affairs as the Licensee may from time to time reasonably request, and (iv) make available to the City reasonable accommodations for the City's audit and inspection.

12.3. Financial records included. The financial records of the Licensee subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computerized records, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Agreement or any performance under this Agreement.

12.4. Costs of audit. If an audit inspection or examination in accordance with this article, discloses underpayments (of any nature) by the Licensee to the City in excess of three percent (3%) of any payments or single payment, the City's actual cost of the audit (based on the amount paid by the City, or based on reasonable charges charged by private auditors and other service providers if the audit is performed by the City's employees), inspection or examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments, shall be reimbursed to the City by the Licensee. Any adjustments and/or payments which must be made as a result of any such audit (whether or not performed in-house by the City), inspection or examination shall be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of the City's findings to the Licensee.

13.0. Compliance with Law.

13.1. Lawful operations. The Licensee shall conduct only lawful operations at and from the License Area in accordance with all Federal, State, County and the City laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. The Licensee acknowledges that this Agreement does not constitute, and the City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to the Licensee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting the Licensee, the License Area, or the Licensee's use of the License Area. The Licensee acknowledges that all of The Licensee's obligations hereunder are in addition to, and cumulative of (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to the Licensee. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, the Licensee expressly repudiates all such benefits with respect to performances rendered under this Agreement. The Licensee further agrees that this Agreement is not intended to diminish any performances to the City that would be required of the Licensee by law if this Agreement had been made between the Licensee and a private citizen. The City has not relinquished any right of condemnation or eminent domain over the License Area. This Agreement is not intended in any way to impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way the Licensee or the License Area. The Licensee promises to comply with all applicable laws. The City's rights and remedies hereunder for breach of such promise supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. Without limiting in any way the generality of the foregoing, the Licensee shall comply with each and every requirement set forth in this Section 13.

13.2. Government Property License Excise Tax. The Licensee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by the Licensee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting the Licensee of any interest in or right of occupancy of the License Area.

13.3. Taxes, Liens and Assessments. In addition to all other Use Fees herein provided, the Licensee shall pay, when due and as the same become due and payable all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be levied upon or assessed against the License Area, the operations conducted therein, any Use Fees paid or other performances under this Agreement by either party, and all possessory interest in the License Area and improvements and other property thereon, whether belonging to the City or the Licensee; and the Licensee agrees to indemnify, defend and hold harmless the City and the License Area and such property and all interest therein and improvements thereon from any and all such taxes and assessments, including any interest, penalties and other expenses which may be imposed, and from any lien therefore or sale or other proceedings to enforce payment thereof. The Licensee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. The City shall have the right, from time to time, to require that all of the foregoing payments be made by the Licensee through the City. The Licensee shall pay all sales, transaction privilege, and similar taxes.

13.4. Building permits. The Licensee shall obtain at its own expense all building or other permits in connection with all construction performed by the Licensee, and shall comply with all zoning, building safety, fire and similar laws and procedures of every description.

14.0. Assignability. This Agreement is not assignable by the Licensee except in strict compliance with the following:

14.1. Assignments and sublicenses prohibited. The Licensee shall not make or suffer to occur any assignment or sublicense of this Agreement or any rights or interests hereunder without first receiving from the City notice of the City's consent to the assignment. References in this Agreement to assignments or sublicenses by the Licensee shall be deemed to apply to all of the following transactions, circumstances and conditions:

14.1.1. Any voluntary or involuntary assignment, transfer, pledge, lien or sublease of the License Area or any interest therein.

14.1.2. The use, occupation, management, control or operation of the License Area or any part thereof by others.

14.1.3. Any transfer of corporate stock or any other direct or indirect transfer of any substantial part of the ownership, management or control of the Licensee or the License Area.

14.1.4. Any assignment or subletting by operation of law.

14.1.5. Any assignment for the benefit of creditors, voluntary or involuntary.

14.1.6. Any bankruptcy or reorganization.

14.2. Assignment remedies. The City may, in its sole discretion and in addition to all other remedies available to the City under this Agreement or otherwise and in any combination, collect Use Fees from the assignee, sublicensee or occupant and apply the net amount collected to the Rent required to be paid thereunder and/or void the assignment or sublease, all without prejudicing any other right or remedy of the City under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of this Agreement against an assignee who did not receive the City's consent.

14.3. Effect of assignment. No assignment, transfer, sublicensing, occupancy or collection shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublicensee or occupant as the Licensee, or a release of the Licensee from the further performance by the Licensee of the provisions of this Agreement. The consent by the City to an assignment or sublicensing shall not relieve the Licensee from obtaining the consent in writing of the City to any further assignment or sublicense. Upon assigning, transferring or subletting the License Area, the Licensee shall not be released of any liability hereunder but shall remain fully and personally obligated under this Agreement.

14.4. Enforceability after assignment. No consent by the City to any assignment shall be deemed to expand or modify this Agreement. This Agreement shall control any conflict between this Agreement and any assignment consented to by the City. This Agreement shall be enforceable personally and in total against the Licensee and each successor, partial or total, and regardless of the method of succession, to the Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

14.5. Grounds for refusal. No assignments of this Agreement are contemplated or bargained for. The Licensee shall pay to the City the sum of One Thousand Dollars (\$1,000) as a transfer fee for legal and administrative expenses related to any request for consent. Without limiting the foregoing in any way, the City has the right to impose upon any consent to assignment such conditions and requirements as the City may deem appropriate and to refuse to consent to any assignment for any reason or no reason in the City's sole and absolute discretion.

14.6. Form of assignment and sublicense. Any permitted assignment or subletting shall be by agreement in form and content acceptable to the City. Without limitation, any sublicense or assignment shall specify and require that in the event of default of the Licensee under such assignment or sublicense, the City at the City's sole option may succeed to the position of the Licensee as to any sublicense or assignee of The Licensee without liability for any prior breaches or performances.

14.7. Assignment by the City. The City shall have the right from time to time to assign its interests in this Agreement to the then owner of fee title to the License Area. Upon any such assignment, the City's liability with regard to this Agreement shall terminate.

15.0. Miscellaneous.

15.1. Notices. Notices, permissions or consents required or permitted under the terms of this Agreement, shall unless otherwise expressly provided, be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to the City: City of Scottsdale
7474 East Indian School Road, Suite 205
Scottsdale, Arizona 85251
ATTN: Asset Management Coordinator

Copy to: City of Scottsdale
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
ATTN: City Attorney

Copy to: City of Scottsdale
Community Services Department
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
ATTN: Senior Recreation Coordinator-Aquatics

If by mail to the Licensee: _____

ATTN _____

If by hand delivery to the Licensee: Same as by mail.

or to such other address as may be designated by the respective parties in writing from time to time. In the event of any service by mail, as aforesaid, service shall be deemed to be complete forty-eight (48) hours after deposited in the United States mail. Notice by E-Mail or facsimile shall not be considered notice hereunder.

15.2 Contract administrator. The Contract Administrator for the City, as used in this License, shall be the Senior Recreation Coordinator for Aquatics, or designee, if any. The Contract Administrator will monitor the performance of the Agreement, coordinate as necessary with the Licensee, oversee schedules, review the Licensee Reports, approve amendments to

the License and all documents related to the permitted uses, and generally be responsible for overseeing the Licensee's performance on behalf of the City. The Contract Administrator may employ the services of such other City staff members as may be deemed appropriate for the effective administration of this License. The Contract Administrator shall be the operational and administrative representative of the City in dealings with the Licensee.

15.3 Time of essence. Time is of the essence of each and every provision of this Agreement.

15.4 Additional indemnity. In addition to all other indemnities and other obligations of the Licensee, the Licensee agrees to hold the City harmless from, to defend the City against, and to indemnify the City from all fines, claims, damages, and suits, including attorneys' fees and court costs, arising from any act or omission on the part of the Licensee, its employees, sub-contractors, or agents, in the use of the License Area or the prosecution of any operations, or portion thereof, under this Agreement or from any failure to comply with any and all of the Licensee's obligations under this Agreement.

15.5 Invalid provisions. In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained.

15.6 Paragraph headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

15.7 Attorneys' fees. In the event any action or suit or proceeding is brought by the City to collect the Use Fee due or to become due under this Agreement or any portion hereof or to take possession of the License Area or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any of the City's rights or remedies under this Agreement, the Licensee agrees to pay the City all costs of such action or suit and all expenses of such action or suit together with such sum as the Court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

15.8 No third party beneficiaries. No person or entity shall be a third party beneficiary to this Agreement.

15.9 Exhibits. All exhibits attached hereto are incorporated into this Agreement by this reference.

15.10 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

15.11 Further assurances. The Licensee agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the City may reasonably require to consummate, evidence, confirm or carry out the agreement contained herein.

15.12 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement shall be construed according to its plain meaning and neither for nor against any party hereto. The Licensee acknowledges that the Use Fee payable under this Agreement was negotiated in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain

meaning and without regard to rules of interpretation, if any, which might otherwise favor the Licensee.

15.13 Survival of Liability. All obligations of the Licensee under this Agreement and all warranties and indemnities of the Licensee under this Agreement shall survive termination of this Agreement for any reason.

15.14 Choice of Law. This Agreement shall be governed by the laws of the State of Arizona.

15.15 Statutory Cancellation Right. In addition to its other rights hereunder, the City shall have the rights specified in A.R.S. Section 38-511.

15.16 Recording. This Agreement shall not be recorded.

EXECUTED as of the date first given above.

(Signatures on next page.)

[Insert name of licensee]

[Insert date of agreement]

an Arizona _____

Name/Title

CITY OF SCOTTSDALE,
an Arizona municipal corporation,

Debra Baird
Community Services General Manager

APPROVED AS TO FORM:

Deborah W. Robberson, City Attorney

REVIEWED BY:

Pauline Hecker, Risk Management Director

Stanley F. Seigal, Asset Management Coordinator

Table of Exhibits

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	1.1	Map of License Area
B	1.4	City's Fixtures
C	4.4	Menu and Pricing
D	4.6.1	Hours of Operation
E	4.14	Job Duties and Employee Training & Safety Plan
F	9.6.2	Sample Insurance Certificate

MCDOWELL MTN. RANCH PARK AQUATICS LICENSE AREA



Exhibit B

The City of Scottsdale's Fixtures

Light fixtures

Locking doors w/keyless entry (3)

Roll-up, locking service window (3)

Windows

Windows opening to park

Three compartment sink with faucets

Separate hand washing sink

Electrical circuits/outlets

Cabinetry

Floor drains

Countertops

Backflow preventer

EXHIBIT C

MENU & PRICING
[provided from RFP response]

EXHIBIT D

HOURS OF OPERATION
[provided from RFP response]

[Insert name of licensee]

[Insert date of agreement]

Exhibit E

**Employee Training and Safety Plan
[provided from RFP response]**

SAMPLE CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

[Insert name of licensee]

[Insert date of agreement]

ACORD tm**PRODUCER:**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY

A

INSURED:

COMPANY

B

COMPANY

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COMPANY

D

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT. TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (mm/dd/yy)	POLICY EXPIRATION DATE (mm/dd/yy)	LIMITS	
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIAB. <input type="checkbox"/> <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROT. <input type="checkbox"/> <input type="checkbox"/>				GENERAL AGGREGATE	\$ 2,000,000
				PRODUCTS COMP/OR AGG	\$ 2,000,000
				PERSONAL & ADV INJURY	\$
				EACH OCCURRENCE	\$ 1,000,000
				FIRE DAMAGE (any one fire)	\$
				MED EXP (Any one person)	\$
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> <input type="checkbox"/>				EACH OCCURRENCE	\$ 500,000
				BODILY INJURY (Per person)	\$
				BODILY INJURY (Per accident)	\$
				PROPERTY DAMAGE	\$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> <input type="checkbox"/>				AUTO ONLY EA.ACCIDENT	\$
				OTHER THAN AUTO ONLY:	\$
				EACH ACCIDENT	\$
				AGGREGATE	\$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
				AGGREGATE	\$
					\$
WORKERS COMPENSATION AND EMPLOYER'S LIABILITY THE PROPRIETOR / <input type="checkbox"/> INCL PARTNERS/EXECUTIVE <input type="checkbox"/> EXCL. OFFICERS ARE:				<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
				EL EACH ACCIDENT	\$ 100,000
				EL DISEASE POLICY LIMIT	\$ 500,000
				EL DISEASE EA EMPLOYEE	\$ 100,000
Other: Employee Dishonesty/Crime					\$ 25,000

Description of Operations/Locations/Vehicles/Special Items:

City of Scottsdale, its representatives, agents and employees, is an Additional Insured under Commercial General Liability, Auto Liability, and Excess Liability follow form to underlying coverage. All cited insurance shall be primary coverage. All cited insurance except Professional Liability shall waive rights of recovery (subrogation) against City of Scottsdale. No policy shall be canceled or materially changed without 30 days advance written notice. Certificate not valid unless signed by authorized representative of insurance company. **APPLICABLE CONTRACT NUMBER:** N/AS **LOCATION:** McDowell Mountain Ranch Park/Aquatic Center, Scottsdale, Arizona.

CERTIFICATE HOLDER:

City of Scottsdale
 Attn: Robin Rodgers
 7447 East Indian School Road, Suite 205
 Scottsdale, AZ 85251

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMES TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS, OR REPRESENTATIVES.

 AUTHORIZED REPRESENTATIVE

ACORD 25-s (1/95)

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FIRST ADDENDUM TO REQUEST FOR PROPOSALS

For
FOOD & BEVERAGE SERVICES
MCDOWELL MOUNTAIN RANCH PARK

Request for Proposals Issued July 26, 2006
Proposal Opening August 25, 2006

This First Addendum is Dated August 7, 2006

NOTICE IS HEREBY GIVEN that the above-referenced Request for Proposals is clarified and modified in the following manner:

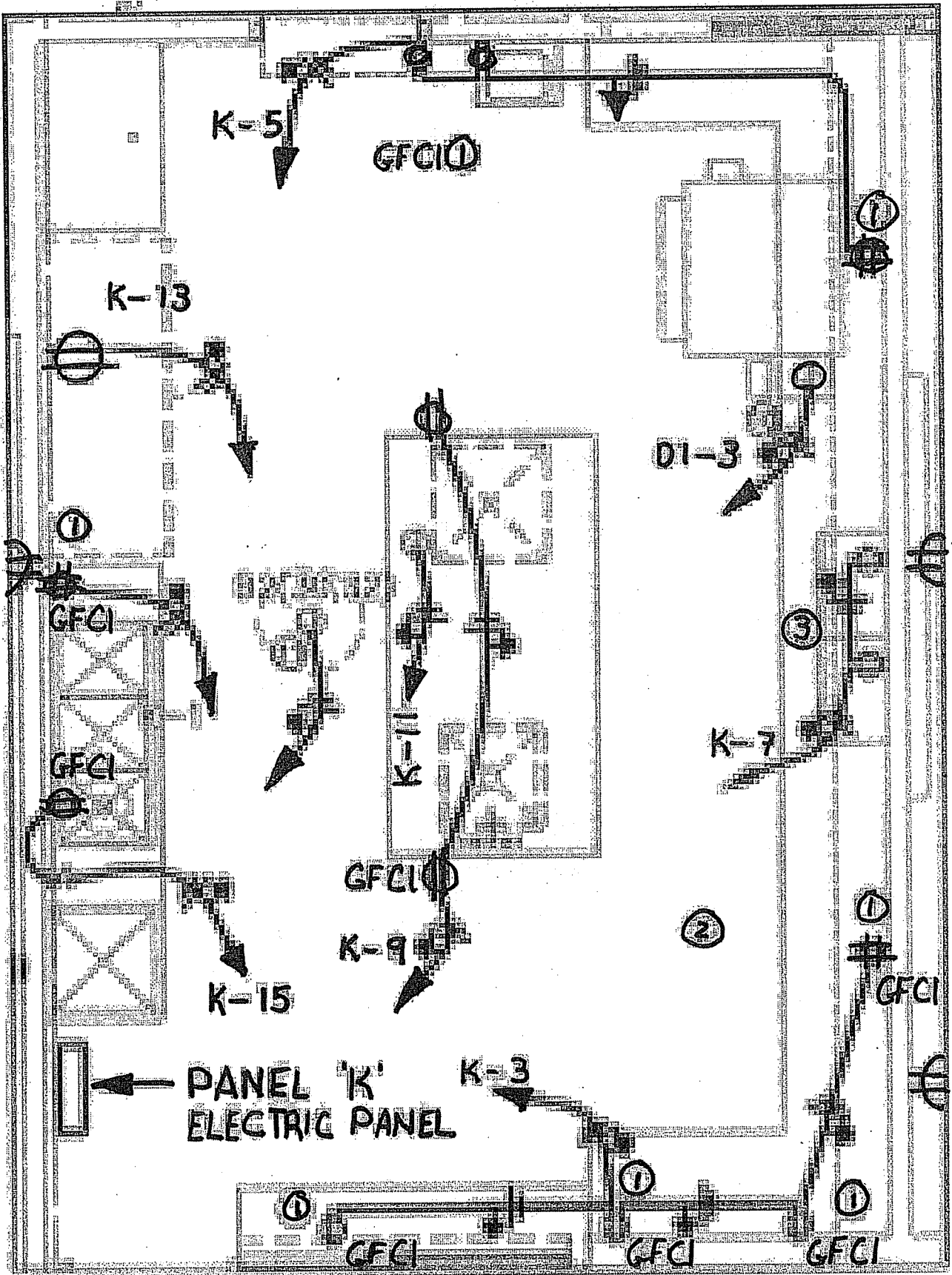
1. On Page 1 of the Request for Proposals ("RFP") in the section titled "LICENSE AREA", the requirement to submit a written affidavit of visitation is eliminated by deleting the first two sentences and the fourth sentence of the second paragraph of this section, and by deleting Exhibit B, "Affidavit of Visitation". Subsequent exhibits shall be re-numbered and re-paginated accordingly. Please note that all site visits must be scheduled in advance and conducted with a city staff member present.
2. Page 13 of the RFP, the placeholder for Exhibit A, shall be replaced with five (5) pages (13 through 17) "Exhibit A - Floor Plans". Subsequent pages of the RFP shall be renumbered accordingly. Exhibit A is attached to this addendum.
3. On Page 4 of the License Agreement attached to the RFP as Exhibit "D", Paragraph 3.3, "Security deposit", shall be modified in the first line by deleting the phrase "At the time of the approval of this Agreement by the City Council" and replacing it with "At the time Licensee and City execute this Agreement".

Except as modified by this First Addendum, the Request for Proposals is unchanged. **Each submittal must include written acknowledgment of this First Addendum.** If you have any questions regarding this matter, please contact Robin Rodgers at (480) 312-2522.

NOTES

- 1 GYP. BD. W/ PAINT FIN.
- 2 P-LAM UPPER CABINET
- 3 P-LAM BASE CABINET
- 4 P-LAM COUNTER TOP
- 5 GRAB BAR
- 6 TOILET PAPER DISPENSER
- 7 WATER CLOSET
- 8 6x6 CERAMIC TILE OVER CEMENTITIOUS TILE BACKER BOARD
- 9 MIRROR
- 10 LAVATORY W/ PIPE WRAP AS REQUIRED
- 11 TRASH RECEPTACLE
- 12 SOAP DISPENSER
- 13 TOILET PARTITION
- 14 SHOWER HEAD
- 15 SHOWER DOOR/ PARTITION
- 16 LOCKER SYSTEM
- 17 BENCH W/ TILE FINISH TO MATCH WALLS
- 18 EXPOSED DECKING W/PAINT FINISH
- 19 MICROWAVE (N.I.C.)
- 20 GLAZING
- 21 EXPOSED STL STRUCT. W/PAINT FINISH
- 22 3 COMPARTMENT SINK
- 23 REFRIGERATOR (N.I.C.)
- 24 P-LAM CABINET
- 25 HAND SINK
- 26 MOP SINK
- 27 ICE MAKER (N.I.C.)

- 28 ELECTRIC HAND DRYER
- 29 BASE HOLDING (REF FIN. SCHEDULE)
- 30 3x2 CERAMIC TILE BASE W/COVE FLOOR
- 31 PROVIDE WATERPROOF MEMBRANE LINER UNDER TILE & SHOWER & FULL HOT. SHOWER WALLS
- 32 PAPER TOWEL DISPENSER/TRASH RECEPTACLE
- 33 SOLID POLYMER COUNTER TOP W/BOTTOM MOUNTED LAYS (REF. 12/AB.6 FOR DETAIL)
- 34 ROLL-IN TYPE SHOWER STALL
- 35 CLOTHES HOOKS
- 36 RECESSED BUILT-IN SHELF
- 37 ADJUSTABLE HOT. SHOWER
- 38 TOILET PAPER DISPENSER/SANITARY NAPKIN DISPOSAL
- 39 ALUM. COUNTER
- 40 FOLD-DOWN SHOWER SEAT
- 41 32" CLEAR OPENING MIN.
- 42 LOCKABLE MAPLE MULTI-FLY MEDIA CABINET WITH ADJUSTABLE SHELVING
- 43 MAPLE MULTI-FLY COUNTERTOP
- 44 2"x24" RETURN AIR GRILL





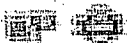







GENERAL NOTES

1. COORDINATE WITH ARCHITECTURAL SHEETS FOR MOUNTING HEIGHTS
2. COORDINATE LOCATION OF ELECTRICAL JUNCTION BOX WITH DEPARTMENT IT WILL SERVE.
3. ALL SWITCHES AND RECEPTACLES SHALL BE GRAY AND HAVE STAINLESS STEEL COVERS/PLATES.

CONSTRUCTION NOTES

- ① INSTALL RECEPTACLE ABOVE COUNTER HEIGHT
- ② INSTALL SWITCH FOR SKATE PARK RECEPTACLES CONTROL RUN (1) 2" CONDUIT TO MAINS/DEPTEN CONTROLLER.
- ③ INSTALL RECEPTACLES BEHIND MICROWAVE (APPROX. 66" A.F.F.)
- ④ CONTRACTOR SHALL RUN (1) 1" CONDUIT WITH (2) #14 CONDUCTORS FROM SPINNIER FIBER TRAPPER ALARM AND (1) 1" CONDUIT WITH (1) #10 TRIPPER FIBER FROM SPINNIER FIBER FLOW METER TO THE FIRE ALARM CONTROL PANEL AS REQUIRED.
- ⑤ INSTALL RECEPTACLE AT 75" A.F.F.
- ⑥ CEILING MOUNTED RECEPTACLE. COORDINATE LOCATION WITH INSPECTION LOCATION.
- ⑦ CEILING MOUNTED J-BOX FOR PROJECTOR CABLES. RUN 2" CONDUIT TO A/V CLOSET, MAINTAIN 24" CLEARANCE FROM CONDUCTORS. COORDINATE WITH PROJECTOR LOCATION.
- ⑧ ALL CONDUIT FOR CEILING FIXTURES SHALL BE CONCEALED ABOVE DECK.
- ⑨ INSTALL SWITCH FOR POOL DECK LIGHTING CONTROL. RUN (1) 1.5" CONDUIT TO MAINS/DEPTEN CONTROLLER.
- ⑩ J-BOX FOR MECHANICAL EQUIPMENT. COORDINATE LOCATION WITH MECHANICAL DRAWINGS.
- ⑪ J-BOX FOR MECHANICAL EXHAUST FAN. COORDINATE LOCATION WITH MECHANICAL DRAWINGS.
- ⑫ J-BOX FOR DOOR CONTROL EQUIPMENT. COORDINATE LOCATION WITH DOOR DEVICES REQUIRING POWER. (2) 1 1/2" ELECTRICAL CONDUIT SHALL BE RUN FROM THIS J-BOX ACCESSIBLE CEILING SPACE.
- ⑬ J-BOX FOR FACE POWER.
- ⑭ TELEPHONE MOUNTING BOARD ATTACHED TO 4'x8' PAINTED ALUMINUM BOARD. EXTEND (2) 1/4" SERVICE CONDUITS TO TELEPHONE POINT OF ENTRY.

ELECTRICAL LEGEND

-  120V DUPLEX RECEPTACLE 12" MOUNTING HEIGHT (UNLESS NOTED OTHERWISE)
-  120V QUADRUPLER RECEPTACLE 12" MOUNTING HEIGHT (UNLESS OTHERWISE NOTED)
-  120V DUPLEX RECEPTACLE WITH LOCKABLE WEATHERPROOF WHILE IN USE COVER
-  SINGLE LIGHT SWITCH
-  DOUBLE LIGHT SWITCH
-  JUNCTION BOX FOR ELECTRICAL EQUIPMENT
-  DEMAND METER FOR A/C OR DWP
-  CONDUIT RUN CONCEALED IN CEILING OR WALL
-  GROUND—EXTEND AND CONNECT TO APPROVED GROUND
-  CONDUIT RUN TO PANEL OR AS NOTED. CROSS MARKS INDICATE QUANTITY OF #12 CONDUCTORS. NO CROSS MARKS INDICATE TWO #12 CONDUCTORS. (NOTE: WIRE SIZE SHOWN @ HOME RUN IS MAXIMUM SIZE FOR ENTIRE CIRCUIT). GROUND WIRE